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Regulatory
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Final Regulation Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 90-20-10 et seq., 18VAC90-25-10 et seq., 18VAC90-30-10 et seq., 18VAC90-40-10 et seq., 18VAC90-50-10 et seq., and 18VAC90-60-10 et seq.
Regulation title	Regulations Governing the Practice of Nursing Regulations Governing the Certification of Nurse Aides Regulations Governing the Licensure of Nurse Practitioners Regulations Governing Prescriptive Authority for Nurse Practitioners Regulations Governing the Certification of Massage Therapists Regulations Governing the Registration of Medication Aides
Action title	Increase in fees
Date this document prepared	11/16/10

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The Board of Nursing is proposing amendments to increase fees charged to regulants and applicants and to establish new fees to cover the cost of continued approval of nursing education programs. Biennial renewal fees for registered nurses (RN) would be increase by \$50 and for licensed practical nurses (LPN) by \$35. For initial approval of a nursing education program, there would be an increase in the application fee of \$450. Fees for survey visits and site visits to nursing education programs would be added in amounts sufficient to offset the board's expenses for such visits.

Similar increases are proposed for clinical nurse specialists, licensed nurse practitioners, and certified massage therapists. For certified nurse aides, the board proposes to change the renewal cycle from biennial (current fee of \$50) to annual (proposed fee of \$30). The annual fee for medication aides would also be raised by \$5 for an annual fee of \$30. Other fees, including application, inactive licensure, and late fees for all professions are increased proportionally.

The change from the proposed to the final regulation is a small increase in the renewal fees for RN's (\$5) and LPN's (\$10); fees for applications, late renewal, and inactive licensure, which are tied to renewal fees, are increased accordingly.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.

On November 16, 2010, the Board of Nursing adopted final action to increase fees for professions it regulates in Regulations Governing the Practice of Nursing, Regulations Governing the Certification of Nurse Aides, Regulations Governing the Licensure of Nurse Practitioners, Regulations Governing Prescriptive Authority for Nurse Practitioners, Regulations Governing the Certification of Massage Therapists, and Regulations Governing the Registration of Medication Aides

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations of the Board of Nursing are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary and the authority to **levy and collect fees** that are **sufficient to cover all expenses** for the administration of a regulatory program.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations

shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.

The amended regulation is mandated by § 54.1-113.

§ 54.1-113. Regulatory boards to adjust fees.--*Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.*

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The scope of the board's regulatory responsibility includes 12 occupations or entities with approximately 194,000 licensees, certificate holders and registrants. The issue to be addressed is the need of the Board of Nursing to increase its fees to cover expenses for essential functions of licensing, investigation of complaints, and adjudication of disciplinary cases to ensure minimal competency for persons licensed, certified or registered by the board. The board also reviewed and considered expenditures relating to initial or continued approval of nursing education programs.

§ 54.1-113 of the *Code of Virginia* requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory board shall be performed. It is necessary that each board have sufficient revenue to cover its expenditures. By the close of FY10, the Board of Nursing (in the combined budgets of Nursing and Certified Nurse Aides) had \$9,920,216 in expenditures and only \$8,666,593 in revenue. With a modest surplus carried forward from previous years, the board is ended the fiscal year on June 30, 2010 with a surplus of \$111,929 but by September 30, 2010, the Board had a deficit of (\$508,553) and will continue to build increasing deficits through the fiscal years going forward. Since the fees from regulants will no longer generate sufficient funds to pay operating expenses for the board, promulgation of regulations for a fee increase is essential. In order to begin to reduce the deficits and have sufficient funding for the operation of the board by calendar year 2011, it is necessary to promulgate final amendments to regulations at the earliest possible date.

Fee increases for licensees regulated by the Board of Nursing are necessary in order for the board and the Department to continue performing essential functions of licensing, certifying or registering new practitioners and to protect the public from continued practice by incompetent or unethical practitioners. Since the Board of Nursing is the only health regulatory board with a statutory responsibility for approval of education programs, it must also have additional revenue to support functions related to assuring that new and existing nursing education programs meet minimal standards.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The Board of Nursing is proposing amendments to increase fees charged to regulants and applicants and to establish new fees to cover the cost of continued approval of nursing education programs. Biennial renewal fees would be increased as follows: 1) For registered nurses, the increase is \$50; 2) For licensed practical nurses, the increase is \$35; 3) For licensed nurse practitioners, the increase is \$30; 4) For certified massage therapists, the increase is \$25; and 5) For clinical nurse specialists, the increase is \$20.

For initial approval of a nursing education program, there is an increase of \$450 in the application fee. Fees for survey visits to nursing education programs (\$2,200) and site visits for failure to achieve 80% NCLEX passage rates (\$1,500) would be added in amounts sufficient to offset the board's expenses for such visits.

For certified nurse aides, the board proposes to change the renewal cycle from biennial (current fee of \$50) to annual (proposed fee of \$30). The annual fee for medication aides would also be raised by \$5 for an annual fee of \$30. Other fees, including application, inactive licensure, and late fees for all professions are increased proportionally.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

- 1) The primary advantage to the public would be that increased fees will produce adequate revenue to fund the licensing and disciplinary activities of the board. With the **shortfall** at (\$508,553) at the end of September, 2010 and projected to increase to almost \$13.5 million in FY14, there could be significant delays in licensing new nurses, CNA's, medication aides and nurse practitioners and in the investigation and adjudication of complaints against licensees. There are no disadvantages; increases in biennial renewal fees ranging from \$25 to \$50 for nurses and in annual renewal fees for CNA's and medication aides should not significantly impact the cost of nursing care for Virginians.
- 2) There are no disadvantages to the agency; the advantage would be that fees would be sufficient to cover expenditures, which is a requirement of the Code of Virginia.
- 3) There are no additional issues.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
18VAC90-20-30	<p>Application for RN licensure – increased from \$130 to \$190</p> <p>Application for LPN licensure – increased from \$130 to \$170</p> <p>Biennial RN licensure renewal – increased from \$95 to \$140</p> <p>Biennial LPN licensure renewal – increased from \$95 to \$120</p>	<p>Application for RN licensure – increased by \$5 to \$195</p> <p>Application for LPN licensure – increased by \$10 to \$175</p> <p>Biennial RN licensure renewal – increased by \$5 from \$140 to \$145</p> <p>Biennial LPN licensure renewal – increased by \$10 from \$120 to \$130</p>	<p>Since the Board's proposed a fee increase in November of 2009, IT costs for the services provided by the Virginia Information Technology Agency (VITA) have grown substantially. The agency budgeted approximately \$1.6 million for FY10, but in FY11, it expects to be charged approximately \$3.6 million and may see that figure rise to \$4.4 million in FY12. Since the formula used to allocate those costs results in Nursing paying approximately 30%, the projected expenditures for the Board are substantially higher. Additionally, \$467,663 of nursing fees was transferred to the General Fund via the 09-10 Budget Bills.</p> <p>Therefore, the Board has found it necessary to adopt an additional increase in its renewal fees for RN's and LPN's in order to offset the rising deficit. Even with a very modest increase over what was proposed, the projected balances indicate that the Board will continue to operate with a deficit through 2016 and will be forced to enact another fee increase unless projected expenditures can be reduced.</p>

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

A public hearing was conducted on September 14, 2010 on the proposed regulations; no comment was received.

Commenter	Comment	Agency response
Nina Beaman & Joette Lehberger, Bryant & Stratton College	To protect the public, they support the proposed increase in licensure fees	The Board appreciates the support.
Greg Hayes	Hope students can understand the changes and it brings a positive result	The Board concurs with the comment.
Carfax (?)	Deserving students need access to scholarships	The Board's fees support a nursing scholarship.
Heather Hall	Opposes the increase because of poor service; she had repeated difficulty with the website in trying to renew her license. Problems should be fixed first.	The Board regrets any problems in its IT systems but it does not control the services nor the costs of those systems.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.

Current section number	Current requirement	Proposed change, rationale, and consequences
Chapter 20, Section 30	Sets out fees for application, renewal, reinstatement and other related fees.	<p>An application for initial licensure for an RN increases from \$130 to \$195, and for an LPN from \$130 to \$180.</p> <p><i>According to the Principles for Fee Development, adopted by the Department in 1999, the application fee should include the cost of one renewal, review and administrative cost for approval of an application, the cost for issuance of a license and a wall certification. The application fee for RN's and LPN's is calculated accordingly.</i></p> <p>The biennial renewal fee for an RN increases from \$95 to \$145, and for an LPN from \$95 to \$130.</p> <p><i>Renewal fees generally account for the majority of revenue for a board, and other fees are calculated in proportion to the renewal fee. Therefore, renewal fees must be set to produce sufficient revenue to offset projected expenditures. Currently, the RN and LPN renewal fees are equal, but RN's are usually employed for higher salaries and often supervise LPN's, so the board is proposing a differential in the fees it charges the two groups.</i></p> <p><i>By comparison with neighboring states (on an annualized basis), Virginia's fee would be \$65 for an LPN – North Carolina is \$46, Kentucky is \$50, West Virginia is \$50, Maryland is \$55, Tennessee is \$75, and DC is \$50.50.</i></p> <p>The inactive fees are set at ½ the renewal fees and would be \$75 for an RN and \$65 for an LPN. The late fees are set at 1/3 of the renewal fee and would be \$50 for an RN and \$40 for an LPN. The fee for reinstatement of a lapsed license is inclusive of the renewal fee, late fee and administrative cost for</p>

		<p>review of an application; that fee is set at \$225 for an RN and \$200 for an LPN. Reinstatement after suspension or revocation necessitates an investigation prior to acting on a request, so the current fee of \$185 is increased to \$300 to offset costs incurred.</p> <p>Miscellaneous fees, including issuance of a duplicate license, provision of transcript of a record, replacement of a wall certificate and verification of licensure are increased by \$10 to offset actual administrative costs.</p> <p>Fees for clinical nurse specialist licensure (CNS) are increased as follows: initial application increase of \$35; biennial renewal increase of \$20; other fees are increased proportionally.</p> <p>Nursing education program fees</p> <p>Currently, the fee of \$1,200 for an application to establish a nursing education program is set out in section 40 of Chapter 20. In proposed regulations, the fee is set out in section 30 with other fees and is increased to \$1,650.</p> <p>A new fee for the board to conduct a survey visit of a nursing education program is established at \$2,200, and a new fee for a site visit triggered by the NCLEX passage rate for a nursing education program is established at \$1,500.</p> <p><i>In preparation of a review of all fees charged to applicants and regulants, the Board of Nursing convened an ad hoc committee to study and set out the average time spent in the processes associated with initial and continued approval of nursing education programs. Costs were calculated based on the time spent by staff in preparation of documents, review, travel to the site, and clerical supplies for mailing and compilation of documentation. The fees established in proposed regulations are specifically set in accordance with the findings of the ad hoc committee. Average costs associated with initial application and review of a new program totaled \$1,650. Average costs associated with a survey visit following graduation of the first class and a survey visit required for continued approval of an education program totaled \$2,206. Average costs associated with a site visit triggered by failure to meet the 80% passage rate for three consecutive years totaled \$1,564.</i></p> <p><i>Currently, the fee for starting a new nursing education program is \$10,000 in DC and \$2,000 in Kentucky; other border states are reviewing costs and considering adoption of such fees.</i></p>
Chapter 20, Section 40	Sets out requirements for establishing a nursing education program.	The current application fee of \$1,200 is deleted and reference to the fee established in section 30 is added.
Chapter 20, Section 60	Sets out requirements for program approval	The fee for a survey visit required for program approval is specified and reference to the fee established in section 30 is added.
Chapter 20, Section 151	Sets out the requirement for meeting the passage rate on NCLEX	The fee for a site visit required for a program that falls below 80% for three consecutive years is specified and reference to the fee established in section 30 is added.
Chapter 20, Section 160	Sets out requirements for maintaining a nursing education	<p>The fee for a survey visit required for maintaining program approval is specified and reference to the fee established in section 30 is added.</p> <p>Additionally, a provision is added that makes failure to pay a required fee for a survey or site visit may subject the program to board action or withdrawal</p>

	program	of board approval. <i>In order to ensure fees are paid as prescribed, there must be some enforcement mechanism included in regulations for program approval.</i>
Chapter 25, Section 80	Sets out the requirements for renewal of certification for CNA's	<p>The proposed regulations would change the renewal of certification from biennial to annual and the fee from \$50 biennially to \$30 annually, resulting in an increase of \$5 per year.</p> <p><i>The budget for the Certified Nurse Aide program is calculated separately from the Nursing budget, but the two budgets are combined for the purpose of expenditures and revenue reporting and projection. It is the escalating deficit in the CNA budget that has affected the need to increase fees at this time. At the end of FY09, the Nursing budget has a surplus of \$3,697,374, but the CNA budget has a shortfall of (\$1,864,160). Therefore, the cash balance in the combined budget for FY09 was \$1,833,214, but the shortfall in the combined budget projected for FY10 is (\$687,532).</i></p> <p><i>While the need to increase fees for CNA's was apparent, the board is cognizant of the pay scale for the profession and the potential impact of a significant increase to offset the shortfall between revenue and expenditures. The board is prohibited by federal law from charging someone to be put on the CNA Registry but has experienced increased reductions in federal funding for the Registry the CNA Registry has built a deficit of approximately \$2 million as revenue from federal programs has steadily decreased from \$1 million in FY04 to \$571,000 in FY09, so the renewal fee is the only source of state revenue for the program.</i></p> <p><i>When regulations for the registration of medication aides were promulgated, the board chose to deviate from a biennial renewal in order to lessen the impact of a renewal fee. It was agreed that having an annual fee rather than biennial would be less burdensome for medication aides. With this proposed action, the board has adopted the same renewal schedule for CNA's and has proposed the same increase of \$5 for an annual renewal. Therefore, instead of paying \$50 each biennium, a certified nurse aide and a medication aide will pay \$30 each year.</i></p>
Chapter 30, Section 50	Sets out fees for the licensure of nurse practitioners	The biennial renewal fee for nurse practitioners is increased from \$50 to \$80 with the late renewal and reinstatement fees increased proportionally. The application fee is increased by \$40 to include the increase in the renewal fee and the issuance of a license and wall certificate. Miscellaneous fees are consistent with those for the RN and LPN license.
Chapter 40, Section 70	Sets out fees for LNP's who have prescriptive authority	The fee for initial issuance is increased from \$50 to \$75, and the biennial renewal is increased from \$25 to \$35. Other fees are proportional and consistent.
Chapter 50, Section 30	Sets out fees for the certification of massage therapists	The fee for initial certification is increased from \$105 to \$140 to include the increase in the renewal fee and in the issuance of a certificate. The biennial renewal is increased by \$25 from \$70 to \$95. Other fees are proportional and consistent.
Chapter 60, Section 30	Sets out fees for the registration of medication aides	The annual renewal fee is increased from \$25 to \$30. While there is not a separate budget for medication aides as there is for nurse aides, the board is aware that the number of disciplinary cases for medication aides has added to its costs for investigation, enforcement, administrative proceedings, and board member time.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative regulatory methods; promulgation of amended regulations to increase fees is the only method for obtaining revenue sufficient to cover the board's expenditures.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulatory action would not strengthen or erode the authority and rights of parents, encourage or discourage economic self-sufficiency, or strengthen or erode the marital commitment. There could be a very modest decrease in disposable family income depending on the amount and nature of the fee increase.